

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SHIRDENIA BRYANT, et al.	:	Civil Action No. C-1-02-006
Plaintiffs	:	(Judge Spiegel)
vs.	:	
PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS REQUESTED</u>
Defendants	:	<u>JURY INSTRUCTION</u>
	:	<u>NUMBER 1</u>

* * * * *

In order to establish a scheme to defraud, which is an essential element of mail fraud, the Plaintiff must prove fraudulent misrepresentations or omissions which were reasonably calculated to deceive persons of ordinary prudence and comprehension. Blount Financial Services, Ins. v. Walter E. Helleran Co. 819 F.2d 151, 153 (6th Cir. 1987).

Respectfully Submitted,

Gary R. Lewis Co., L.P.A.

/s/ Gary R. Lewis
GARY R. LEWIS, #0017697
Attorney for Defendant Prescott Bigelow and
Defendant Roseanne Christian
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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Requested Jury Instruction Number 1 using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis

Gary R. Lewis

Attorney for Defendant Prescott Bigelow and
Defendant Roseanne Christian

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PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS REQUESTED</u>
Defendants	:	<u>JURY INSTRUCTION</u>
	:	<u>NUMBER 2</u>

* * * * *

In order to prove the existence of an enterprise for purposes of the RICO statute, Plaintiff must prove an association of fact which functions as an ongoing organization; its members must function as a continuing unit and the enterprise must be separate from the pattern of racketeering activity in which it engages. Frank v. D'Ambrosio, 4 F. 3d 1378 (6th Cir. 1983).

Respectfully Submitted,

Gary R. Lewis Co., L.P.A.

/s/ Gary R. Lewis
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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Requested Jury Instruction Number 2 using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis

Gary R. Lewis

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Defendant Roseanne Christian

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Plaintiffs	:	(Judge Spiegel)
vs.	:	
PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS REQUESTED</u>
Defendants	:	<u>JURY INSTRUCTION</u>
	:	<u>NUMBER 3</u>

* * * * *

In order to participate, directly or indirectly in the conduct of an enterprise's affairs, one must have some part in directing those affairs. An individual is not liable under 18 U.S.C. § 1962(c) unless one has participated in the operation or management of the enterprise itself. Reves v. Ernest & Young, 507 U.S. 170 (1993).

Respectfully Submitted,

Gary R. Lewis Co., L.P.A.

/s/ Gary R. Lewis
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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Requested Jury Instruction Number 3 using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis

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Attorney for Defendant Prescott Bigelow and
Defendant Roseanne Christian

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Plaintiffs	:	(Judge Spiegel)
vs.	:	
PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS REQUESTED</u>
Defendants	:	<u>JURY INSTRUCTION</u>
	:	<u>NUMBER 4</u>

* * * * *

To insert at page 19 of Plaintiff's requested instructions: If you find that no enterprise existed you must find for the Defendants.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Requested Jury Instruction Number 4 using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis

Gary R. Lewis

Attorney for Defendant Prescott Bigelow and
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Plaintiffs	:	(Judge Spiegel)
vs.	:	
PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS REQUESTED</u>
Defendants	:	<u>JURY INSTRUCTION</u>
	:	<u>NUMBER 5</u>

* * * * *

Ohio Revised Code § 5713.03 Taxable Valuation of real property

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner.

Source: R.C. 5713.03

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Requested Jury Instruction Number 5 using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis

Gary R. Lewis

Attorney for Defendant Prescott Bigelow and
Defendant Roseanne Christian

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Plaintiffs	:	(Judge Spiegel)
vs.	:	
PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS REQUESTED</u>
Defendants	:	<u>JURY INSTRUCTION</u>
	:	<u>NUMBER 6</u>

* * * * *

Ohio Revised Code § 5313.05 Forfeiture of vendee's interest under the contract.

When the vendee of a land installment contract defaults in payment, forfeiture of the interest of the vendee under the contract may be enforced only after the expiration of thirty days from the date of the default. A vendee in default may, prior to the expiration of the thirty-day period, avoid the forfeiture of his interest under the contract by making all payments currently due under the contract and by paying any fees or charges for which he is liable under the contract.

If such payments are made within the thirty-day period, forfeiture of the interest of the vendee shall not be enforced.

Source: R.C. 5313.05

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Requested Jury Instruction Number 6 using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis

Gary R. Lewis

Attorney for Defendant Prescott Bigelow and

Defendant Roseanne Christian

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vs.	:	
PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS REQUESTED</u>
Defendants	:	<u>JURY INSTRUCTION</u>
	:	<u>NUMBER 7</u>

* * * * *

Ohio Revised Code § 5313.07 When foreclosure required; quiet title action and
cancellation not prohibited.

If the vendee of a land installment contract has paid in accordance with the terms of the contract for a period of five years or more from the date of the first payment or has paid toward the purchase price a total sum equal to or in excess of twenty per cent thereof, the vendor may recover possession of his property only by use of a proceeding for foreclosure and judicial sale of the foreclosed property as provided in section 2323.07 of the Revised Code. Such action may be commenced after expiration of the period of time prescribed by sections 5313.05 and 5313.06 of the Revised Code. In such an action, as between the vendor and vendee, the vendor shall be entitled to proceeds of the sale up to and including the unpaid balance due on the land installment contract.

Source: R.C. 5313.07

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Requested Jury Instruction Number 7 using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis
Gary R. Lewis
Attorney for Defendant Prescott Bigelow and
Defendant Roseanne Christian

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FOR THE SOUTHERN DISTRICT OF OHIO
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vs.	:	
PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS REQUESTED</u>
Defendants	:	<u>JURY INSTRUCTION</u>
	:	<u>NUMBER 8</u>

* * * * *

Ohio Revised Code § 5313.08 When an action for forfeiture and restitution may be brought.

If the contract has been in effect for less than five years, in addition to any other remedies provided by law and after the expiration of the periods prescribed by sections 5313.05 and 5313.06 of the Revised Code, if the vendee is still in default of any payment the vender may bring an action for forfeiture of the vendee's rights in the land installment contract and for restitution of his property under Chapter 1923 of the Revised Code. When bringing the action under Chapter 1923. of the Revised Code, the vendor complies with the notice requirement of division (A) of section 1923.04 of the Revised Code by serving notice pursuant to section 5313.06 of the Revised Code. The court may also grant any other claim arising out of the contract.

Source: R.C. 5313.08

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Requested Jury Instruction Number 8 using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis
Gary R. Lewis
Attorney for Defendant Prescott Bigelow and
Defendant Roseanne Christian

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PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS REQUESTED</u>
Defendants	:	<u>JURY INSTRUCTION</u>
	:	<u>NUMBER 9</u>

* * * * *

Ohio Revised Code § 1923.06 Summons; service of process

(A) Any summons in an [eviction] action, including a claim for possession, pursuant to this chapter shall be issued, be in the form specified, and be served and returned as provided in this section. Such service shall be at least seven days before the day set for trial.

(B) Every summons issued under this section to recover residential premises shall contain the following language printed in a conspicuous manner: "A complaint to evict you has been filed with this court. No person shall be evicted unless the person's right to possession has ended and no person shall be evicted in retaliation for the exercise of the person's lawful rights. If you are depositing rent with a clerk of this court you shall continue to deposit such rent until the time of the court hearing. The failure to continue to deposit such rent may result in your eviction. You may request a trial by jury. You have the right to seek legal assistance. If you cannot afford a lawyer, you may contact your local legal aid or legal service office. If none is available, you may contact your local bar association."

Source: R.C. 1923.06

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Requested Jury Instruction Number 9 using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis

Gary R. Lewis

Attorney for Defendant Prescott Bigelow and

Defendant Roseanne Christian

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PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS REQUESTED</u>
Defendants	:	<u>JURY INSTRUCTION</u>
	:	<u>NUMBER 10</u>

* * * * *

To be added at page 7 of Plaintiff's requested instruction, Impeachment

The credibility of a witness may also be impeached if you find that the witness has been convicted of a crime.

Source: Rule 609, Federal Rules of Evidence.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Requested Jury Instruction Number 10 using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis

Gary R. Lewis

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